

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2016

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.4771 of 2015
and M.P.No.1 of 2015

V.M.Palani

.. Petitioner

Vs

M/s.INZI Controls India Limited,
Rep. by its Executive - HR & GA Mr.Prabhu Sankar,
No.71 & 72, Bangalore Highway,
Irungattukottai,
Sriperumbudur Taluk,
Kancheepuram District - 602 105.

.. Respondent

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 14.10.2015 made in I.A.No.18 of 2015 in O.S.No.6616 of 2013 on the file of the XVI Additional City Civil Court, Chennai.

For Petitioner : Mr.S.Sivakumar

ORDER

The Civil Revision Petition is filed against the order dated 14.10.2015 made in I.A.No.18 of 2015 in O.S.No.6616 of 2013 on the file of the XVI Additional City Civil Court, Chennai.

2.The respondent as a plaintiff filed a suit for recovery of advance amount stating that he is a tenant under the defendant and he vacated the premises. According to the respondent/plaintiff when he demanded for return of advance amount, the defendant has not returned the same. Therefore, after issuance of notice, the plaintiff filed a suit for recovery of that amount. Resisting the same, the petitioner/defendant has filed an application in I.A.No.18 of 2015 for rejection of the plaint stating that there is an arbitration clause mentioned in the Lease Deed and hence the plaint has to be rejected. But the Trial Court has dismissed the said application. Against which, the present Civil Revision Petition has been filed.

3.At the time of admission, argument of the learned counsel for the petitioner is heard in length.

4.The learned counsel for the petitioner submitted that in paragraph No.8 of the order passed by the Trial Court, it was held that the application has been filed under Order VII Rule 11 of CPC and no application under Section 8 of the Arbitration Act has been filed. He further submitted that the Trial Court failed to consider that the relief sought for in the application was only to refer the parties for arbitration in view of the existence of the arbitration clause in the agreement. Hence, he prayed for setting aside the impugned order passed

by the Trial Court. To substantiate his argument, he relied upon the decision reported in ***CDJ 2013 Orissa HC 250 (Surubali Deep vs. Jamuna Naik)*** and submit that non-mentioning of the relevant provision is not a ground for rejection of the application.

5.The respondent as a plaintiff filed a suit for recovery of advance amount including the interest and also create charge over the property stating that the respondent and the petitioner entered into a lease agreement dated 18.06.2012 with retrospective effect from 01.04.2012. The monthly rent agreed was Rs.3,10,000/- and the respondent paid Rs.22 lakhs as advance in the form of two cheques dated 16.12.2010 each for Rs.11 lakhs. The lease period was from 01.04.2012 to 31.03.2013. The respondent/plaintiff intimated the petitioner/defendant for vacating the premises on 02.01.2013 and he vacated the premises on 28.02.2013. As per Clause 3 of the lease agreement, the petitioner/defendant had to return the advance amount. After issuance of notice, the respondent/plaintiff filed a suit for recovery of advance amount due including the electricity deposit and interest. The petitioner who is the defendant without filing any written statement filed an application in I.A.No.18 of 2015 under Order VII Rule 11 of CPC for rejection of the plaint stating that since there is an existence of arbitration clause, the matter should be referred to the Arbitrator.

6. Now, this Court without going to the merits has to consider the decision reported in ***CDJ 2013 Orissa HC 250 (Surubali Deep vs. Jamuna Naik)***, wherein in paragraph No.8, it was held as follows:

“8. Undisputedly, no provision of law has been mentioned in the petition made under Annexure-3 seeking the relief claimed therein. Now the question arises as to whether for non-mention of the provisions of law in the petition, the same is liable to be rejected and consequently the Election Tribunal is not justified to hold that non-mention of relevant section in a petition cannot be a ground to reject the said petition because whenever a petition is filed the same has to be considered as per law.”

7. There is no quarrel over the ratio decidendi laid down in the citation. But the above citation is not applicable to the facts of the present case because in this case the suit has been filed for recovery of advance amount. Even though it was stated that there is an arbitration clause, once notice has been issued and there is no dispute in respect of other things except return of advance amount only, I am of the view that the application under Order VII Rule 11 of CPC is not maintainable. Hence, I do not find any reason to interfere with the finding of the Trial Court and the Civil Revision Petition deserves to be dismissed as devoid of merits.

In the result, the Civil Revision Petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

04.01.2016

Index: Yes/No
Internet: Yes/No
cse

To

The XVI Additional Judge,
City Civil Court, Chennai.

R.MALA. J.,

cse

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